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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

ALASDAIR TURNER, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

APPLE, INC., a California corporation,

Defendant.

No. 5:20-cv-7495

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

JURY TRIAL DEMANDED

## INTRODUCTION

1. Plaintiff Alasdair Turner (“Plaintiff”) files this First Amended Class Action Complaint against Defendant Apple, Inc. (“Apple” or “Defendant”), on behalf of himself and all persons in the United States who owned or leased an Apple iPhone with iOS 13 installed and who used a limited cellular data plan with that iPhone, for Apple’s unlawful and unfair business practices.

2. To use their iPhones, consumers are required to use Apple’s mobile operating system—designed and marketed by Apple—known as iOS. In September 2019, Apple released iOS version 13, which Apple promised would bring “improvements across the entire system that make your iPhone even faster and more delightful to use.”<sup>1</sup>

3. Apple did not disclose—either in connection with iPhone purchases, installation of iOS 13, or otherwise—that it has the capability to surreptitiously use consumers’ valuable cellular data exclusively for its own purposes, including for software development or other technical improvements. Apple also did not disclose that iOS 13 contained hidden software code (the “Consuming Code”) that caused devices running iOS 13 to consume cellular data without the user’s input or control, and without providing the user any identifiable benefit.

4. As discussed in detail below, Apple designed iOS 13 in such a way that when used in the ordinary course, iOS 13 caused the user’s iPhone to surreptitiously transmit cellular data, increasing the user’s overall cellular data consumption without his or her knowledge, without any change in the user’s usual behavior, and without providing the user any identifiable benefit. By increasing cellular data usage, the Consuming Code increased costs to users and used up the cellular data they purchased from their cellular providers.

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<sup>1</sup> <https://www.apple.com/ios/ios-13/>

5. For iPhone users who paid their cellular provider directly in proportion to the data they used, or for iPhone users who paid for capped data plans (for example, 10 GB of data a month), the Consuming Code caused consumers to be charged for cellular data they did not use, or consumed data for which they otherwise would have been entitled to use under their data plans.

6. Soon after Apple released iOS 13, iPhone owners started submitting complaints and tech support queries related to the Consuming Code. They explained to Apple that their phones were using copious amounts of data without explanation—yet Apple did nothing to fix the problem for months. Finally, in June 2020, Apple released iOS version 13.6—the 14th revision of iOS 13—which stopped the excess cellular data consumption.

7. Given Apple’s months-long delay in mitigating the harmful effects of iOS 13, the only reasonable explanation is that the Consuming Code was not a defect. The Consuming Code was designed to measure the performance of a new Apple software product or iOS feature, unbeknownst to and without the input of users—and at their expense.

8. Apple's failure to disclose its capacity to secretly appropriate iPhone users' valuable cellular data exclusively for its own purpose and benefit was material—and its use of that capability directly affected the central functioning of Plaintiff and Class members' iPhones. Had Apple disclosed its data use capabilities or the Consuming Code, Plaintiff and Class members would not have acted as they did and instead would have purchased a different manufacturer's mobile device, paid less for their iPhones in light of Apple's ability to secretly use their cellular data, or, at a minimum, selected a different cellular data plan.

## PARTIES

9. Plaintiff Alasdair Turner is a resident and citizen of the State of Washington.

1 Sometime in September or October 2019, Mr. Turner updated his iPhone to iOS 13. Before he  
2 downloaded iOS 13, Mr. Turner did not know, nor could he have known through reasonable  
3 diligence at any time since he purchased his phone, of Apple's capacity to secretly appropriate  
4 his cellular data or the Consuming Code.

5 10. Defendant Apple Inc. is a corporation incorporated under the laws of the State of  
6 California. It keeps its principal place of business in Cupertino, California.

### 7 JURISDICTION AND VENUE

8 11. This Court has original jurisdiction over this action under the Class Action  
9 Fairness Act of 2005, 28 U.S.C. § 1332(d)(2). This is a class action in which the amount in  
10 controversy exceeds the sum of \$5,000,000, and Apple is a citizen of a State different from that  
11 of at least one Class member.

12 12. Venue is proper in this District under 28 U.S.C. § 1391(a) through (d) because  
13 Apple's principal place of business is located in this District and substantial parts of the events or  
14 omissions giving rise to the claims occurred in the District.

### 15 INTRADISTRICT ASSIGNMENT

16 13. Under Local Rule 3-2(c) and (e) assignment of this action to the San Jose  
17 Division is proper because Defendant Apple, Inc. is headquartered in Santa Clara County, and a  
18 substantial part of the events or omissions which give rise to the claims alleged herein occurred  
19 there.

### 20 FACTS

21 **A. Apple's iOS is an essential—and non-negotiable—component of using an iPhone.**

22 14. Since it was first released in 2007, the Apple iPhone has become a ubiquitous  
23  
24

1 piece of technology. Apple sold approximately 185 million iPhones in 2019 alone.<sup>2</sup> By May  
2 2020, over 52% of the smartphones used in the United States were iPhones, giving Apple a  
3 greater market share than all other phone manufacturers combined.<sup>3</sup>

4 15. Apple bundles the iPhone with its proprietary mobile operating system: iOS.  
5 iPhone owners are required to use iOS on their iPhones—they have no commercial options for  
6 operating their iPhones other than iOS. Over the last eight years (starting with iOS 6), Apple has  
7 announced a new iOS version each June and released it to the public each September, with  
8 periodic updates issued throughout the year.

9 16. One of the reasons that Apple updates iOS periodically is to add security  
10 improvements called “patches.” If users choose not to install the most recent iOS version, their  
11 iPhones may be vulnerable to outside attack. Apple itself encourages its users to download the  
12 latest iOS updates for this reason. For example, after Wikileaks published documents in 2017  
13 allegedly showing that the U.S. government was trying to exploit vulnerabilities in Apple’s iOS  
14 to hack into iPhones, an Apple spokesperson said:

15 Our products and software are designed to quickly get security updates  
16 into the hands of our customers, with nearly 80 percent of users  
17 running the latest version of our operating system. While our initial  
18 analysis indicates that many of the issues leaked today were already  
19 patched in the latest iOS, we will continue work to rapidly address any  
20 identified vulnerabilities. We always urge customers to download the  
21 latest iOS to make sure they have the most recent security updates.<sup>4</sup>

22 17. Given Apple’s representations, users acted reasonably by accepting and installing  
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21 <sup>2</sup> [https://www.usatoday.com/story/tech/2019/12/31/iphone-sales-dip-but-still-no-1-2019-airpods-  
and-watch-rise/2775193001/](https://www.usatoday.com/story/tech/2019/12/31/iphone-sales-dip-but-still-no-1-2019-airpods-and-watch-rise/2775193001/)

22 <sup>3</sup> [https://www.statista.com/statistics/266572/market-share-held-by-smartphone-platforms-in-the-  
united-states/](https://www.statista.com/statistics/266572/market-share-held-by-smartphone-platforms-in-the-united-states/)

23 <sup>4</sup> [https://techcrunch.com/2017/03/07/apple-says-most-vulnerabilities-in-wikileaks-docs-are-  
already-patched/](https://techcrunch.com/2017/03/07/apple-says-most-vulnerabilities-in-wikileaks-docs-are-already-patched/)

1 Apple's iOS updates.

2 18. Apple required that users who downloaded iOS 13 agree to its Software Licensing  
3 Agreement for iOS 13, which provides in paragraph 2(j):

4 You agree that many features, built-in apps, and Services of the Apple Software  
5 transmit data and could impact charges to your data plan, and that you are  
6 responsible for any such charges. You can view and control which applications  
7 are permitted to use cellular data and view an estimate of how much data such  
8 applications have consumed under Cellular Data Settings. In addition, Wi-Fi  
9 Assist will automatically switch to cellular when you have a poor Wi-Fi  
10 connection, which might result in more cellular data use and impact charges to  
11 your data plan. . . .

12 19. Conspicuously omitted from Apple's Licensing Agreement, however, was  
13 existence of the Consuming Code, or any indication that Apple possessed either the capability or  
14 intention to surreptitiously consume iPhone users' valuable cellular data exclusively for its own  
15 purpose and benefit, as alleged herein.

16 **B. Consumers pay cellular providers, not Apple, for their cellular data.**

17 20. Though Apple is responsible for the hardware and operating system software on  
18 its iPhones, it does not provide iPhone users with the data plans needed to use those iPhones.  
19 That is, while Apple acknowledges that "[a] Wi-Fi or cellular data connection is required for  
20 some features of the Apple Software and Services,"<sup>5</sup> it does not provide that Wi-Fi or cellular  
21 data connection itself. Instead, consumers must turn to cellular and data providers like AT&T,  
22 T-Mobile, Verizon, and Sprint, among others.

23 21. Consumers pay those cellular providers directly, both for calling plans and for the  
24 cellular data they need to access the internet without a Wi-Fi connection. Most providers offer  
cellular data as part of a "plan": consumers pay monthly for a plan that entitles them to use a

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<sup>5</sup> Software License Agreement 2(h), [https://www.apple.com/legal/sla/docs/iOS13\\_iPadOS13.pdf](https://www.apple.com/legal/sla/docs/iOS13_iPadOS13.pdf)

1 particular amount of cellular data per month. Consumers who exceed their monthly cellular data  
2 allotment are charged overage fees, which often are exorbitant.

3 22. For all consumers, then, and particularly for those who pay for capped data plans,  
4 the amount of data their phones consume each month is important to the use and functioning of  
5 their cell phone, in addition to the amount they pay their cellular provider for the data that they  
6 receive.

7 **C. iOS 13's Consuming Code ate through consumers' data—without explanation—and**  
8 **deceptively attributed that data use to "Uninstalled Apps."**

9 23. Within weeks of Apple releasing iOS 13, consumers started noticing that their  
10 iPhones were consuming data inexplicably. Despite having relatively consistent levels of cellular  
11 data use before iOS 13, their iPhones began using significantly higher amounts of data after they  
12 installed iOS 13.

13 24. Users want to monitor their valuable cellular data usage and avoid overage  
14 charges, throttling, and de-prioritization. For users who pay for capped data plans, such data  
15 usage tracking is essential. Apple is aware of this and, therefore, provides users with a cellular  
16 data meter on their iPhones: consumers can go into their iPhone's *Settings > Cellular > Cellular*  
17 *Data* menu to find out how much cellular data their iPhone has consumed in a particular period,  
18 categorized by the application or iOS feature that consumed the data. To track their data usage  
19 over a particular time period, users can manually reset their cellular data meter to zero.

20 25. One of the categories that an iPhone's cellular data meter tracks is "Uninstalled  
21 Apps." Before Apple implemented the Consuming Code, Uninstalled Apps accounted  
22 exclusively for mobile data from apps that the user had uninstalled (and so the source of the data  
23 consumption was no longer identified in the list of apps on the cellular data meter). Because apps  
24 in this category have been uninstalled, the category should not increase except at the moment

1 when a user uninstalls an app, and then only by the amount of data used by that uninstalled app.  
 2 The Uninstalled Apps category, therefore, recorded a very limited set of data use: the amount of  
 3 data used by applications that the user deleted since the last time the cellular data meter was reset  
 4 to zero.

5 26. After installing iOS 13, users who checked their cellular data meters discovered  
 6 kilobytes, megabytes, or in some cases gigabytes<sup>6</sup> of cellular data consumption attributed to  
 7 Uninstalled Apps. Strangely, the amount of data supposedly used by uninstalled apps continued  
 8 to increase even when users did not uninstall any new apps.

9 27. This Apple-consumed cellular data use showed up on user's cellular provider  
 10 bills. Users on fixed data plans received notices that they had reached their data limits and were  
 11 charged for additional data over that limit.

12 28. Unsurprisingly, many consumers took to the internet to share their problem and to  
 13 see if anyone had a solution:

- 14 • "I have been having this issue as well and have been working with Apple  
 15 for three weeks now. My phone has blown through 19 gig [sic] of data of  
 16 which 70% has been uninstalled apps, with the phone being replaced, and  
 nothing being installed or uninstalled on the phone. This has been going on  
 the past three weeks with no resolution."<sup>7</sup> (Nov. 14, 2019)
- 17 • "Mine also shows 9.3MB of cellular data used from 'uninstalled apps' so  
 18 far this month and my cycle is over at the end of the 11th. It's been showing  
 19 a few MB's every month now and I reset my counter at the end of each  
 20 billing cycle. I haven't deleted any apps in a few months. I'm on 13.3  
 iPhone 7. Probably just a bug not high on their radar if at all on their  
 21 radar."<sup>8</sup> (Jan. 8, 2020)
- "I have the same problem since iOS 13.1 (official). Right now on 13.3 it's

22 <sup>6</sup> One megabyte (MB) is one thousand twenty four kilobytes (KB). One gigabyte (GB) is one  
 23 thousand twenty four megabytes. 100MB is equivalent to 40 pages of web surfing or an hour on  
 Google Maps. 1GB is equivalent to streaming a one hour video on Netflix.

24 <sup>7</sup> <https://discussions.apple.com/thread/250660254?answerId=251283502022#251283502022>

<sup>8</sup> <https://forums.macrumors.com/threads/uninstalled-apps-using-cellular-data.2195879/>



pretty bad: about 119 MB in a month.”<sup>9</sup> (Jan. 28, 2020)

- “Out of the 900MB I used, 360MB came from System Services and Uninstalled Apps. Sometimes it’s a lot more.”<sup>10</sup> (Jan. 28, 2020)
- “I’ve been working with Apple support since beginning of December! My case has been ‘escalated’ in priority to engineers several times. Guess what...huge surprise....no answers/solutions. The latest I heard was ‘in cases like these, usually you just have to wait for the next update.’ This was right before I updated to 13.3.1. Another big shock....that did NOT fix the issue. I’m not leaking as much data as I previously was in uninstalled apps, however, it is still going up.....with nothing installed, uninstalled, etc!”<sup>11</sup> (Feb. 4, 2020)
- “Today, I turned my cellular data on for about 10 minutes. In that time, uninstalled apps used over 20MBs, shooting up to 80 MBs. What is going on here?”<sup>12</sup> (Feb. 5, 2020)

29. To demonstrate the problem on their iPhones, many users began resetting their cellular data meters and then reporting the subsequent data consumption shown in the Uninstalled Apps category—even though they had not uninstalled any applications:

- “I just, Reset Statistics . . . I did not delete any apps after selecting ‘reset.’ Question: Why does my data usage for uninstalled apps keep climbing. [sic] It’s gone up 5 MBs in about 20 minutes.”<sup>13</sup> (Aug. 31, 2019)
- “Hello, I noticed I have uninstalled data usage under cellular usage. I’ve read that it’s the data that the apps I deleted used, and that it should be cleared if I were to reset the statistics. However, I reset my statistics, and I hadn’t deleted any apps after that until now. However, again, the uninstalled apps are showing on my data usage .... with like 90mb. Why is this happening?”<sup>14</sup> (Sept. 23, 2019)
- “It is happening with my iPhone 8 too. This category consumed 1.1 Gb in the last 2 days. I reset my counter and hadn’t uninstalled anything after. I

<sup>9</sup> <https://forums.macrumors.com/threads/uninstalled-apps-using-cellular-data.2195879/>

<sup>10</sup> <https://forums.macrumors.com/threads/uninstalled-apps-using-cellular-data.2195879/page-2>

<sup>11</sup> <https://discussions.apple.com/thread/250660254?answerId=251283502022&page=3>

<sup>12</sup> <https://forums.macrumors.com/threads/uninstalled-apps-using-cellular-data.2195879/page-2>

<sup>13</sup> <https://forums.macrumors.com/threads/uninstalled-apps-using-cellular-data.2195879/>

<sup>14</sup> <https://discussions.apple.com/thread/250660254>

have a support case open. No resolution yet.”<sup>15</sup> (Sept. 26, 2019)

• “I noticed this issue as well. For example, I can do a ‘Reset Statistics’ for Cellular data before going to bed, not touch my phone at all the entire night, and the following morning there will be a few Kb’s worth of data next to ‘Uninstalled Apps’. It wouldn’t be so annoying if we just knew what it was.”<sup>16</sup> (Jan. 28, 2020)

• “So this is what happened : After 2-3 minutes my phone became hot. I checked iOS setting/cellular and saw an uninstalled app used 700-800MB. I closed the settings and reopened it and it was 900MB. The uninstalled app used 1.2GB data in less than 5-6 minutes. I immediately restarted my iPhone and after that it used another 200-300MB and then stopped downloading or uploading. . . . UPDATE : I reset my cellular statistics many times since yesterday and didn’t install or uninstall anything but ‘Uninstalled App’ is still transferring data. ( About 350KB today. ) I contacted Apple Support again and asked for an explanation because this is really weird and I’m worried about my privacy and personal data.”<sup>17</sup>

• “Same problem here on iOS 13.3. In an attempt to remove other factors I did the following [sic]:

- Turned off the phone and restarted it.
- Reset the data statistics.
- Used the phone, but did not uninstall any apps.

And, yet, the line for ‘Uninstalled Apps’ in the mobile data section in settings shows a few KB of data usage; slowly going up. I find this a bit unsettling but haven’t tried a complete factory reset yet.”<sup>18</sup>

• “Checked my Data usage and saw 435kb for Uninstalled Apps. I haven’t uninstalled any apps in weeks let alone today. This section was zero when I went to sleep, and my phone only uses Cellular while I am at work. So as you can bet I’m very confused as to how this has happened. . . . **Update:** the size has grown to 484kb and I still haven’t deleted any apps. **Update 2:** it has gone up another 12kb. It’s not a lot but I really want to know what is using this data? It’s not u stalled [sic] apps as I haven’t uninstalled any apps since I reset the statistics yesterday morning. . . . **Update Day 3:** It is now at 866kb. I still haven’t deleted any apps. How is this getting larger?”<sup>19</sup>

<sup>15</sup> <https://discussions.apple.com/thread/250660254?answerId=250660254021#250660254021>

<sup>16</sup> <https://forums.macrumors.com/threads/uninstalled-apps-using-cellular-data.2195879/>

<sup>17</sup> [https://www.reddit.com/r/applehelp/comments/deg253/uninstalled\\_app\\_used\\_12gb\\_data/](https://www.reddit.com/r/applehelp/comments/deg253/uninstalled_app_used_12gb_data/)

<sup>18</sup> [https://www.reddit.com/r/ios/comments/d7njbf/ios\\_13\\_uninstalled\\_apps\\_using\\_data\\_even\\_after/fcy5f7x/](https://www.reddit.com/r/ios/comments/d7njbf/ios_13_uninstalled_apps_using_data_even_after/fcy5f7x/)

<sup>19</sup> [https://www.reddit.com/r/ATT/comments/e584ra/iphone\\_uninstalled\\_apps\\_using\\_data/](https://www.reddit.com/r/ATT/comments/e584ra/iphone_uninstalled_apps_using_data/)

- “Has anyone noticed that ‘uninstalled apps’ are constantly using mobile data? I haven’t uninstalled any apps in weeks and have reset my network data statistics many times since then, and uninstalled apps are somehow constantly increasing in mobile data used? I can reset the network stats and see uninstalled apps have used data within 5 minutes?! I’m at a huge loss as to why this is. Within an hour of resetting the statistics it has managed to use over 600kb of data?! Running iOS 13.2.2.”<sup>20</sup>
- “The uninstalled app section in cellular is using data up to few kb even though they are uninstalled. I reset the history of cellular usage and it still starts using it up. Anyone know why?”<sup>21</sup>
- “I have the same problem. Yesterday I totally nuked my phone and installed everything fresh – not even a restore from backup. And within minutes I was getting cellular data usage from an ‘uninstalled app.’ I’m already at 1gig [sic] in just 20 hours.”<sup>22</sup> (Jan. 6, 2020)
- “Over the last month, my updates from Apple Support was...drum roll...No update available yet from the Apple Engineering team. My newest email update was to install 13.3.1 (which I did Feb 2nd) and reset my Cellular Data usage. Currently sitting at 308KB in under 48 hours. A huge difference from my 4GBs in 72 hours in December, but still creeping up.”<sup>23</sup> (Feb. 4, 2020)

30. The issue was more than just annoying for many users—it had significant impacts on their cellular data usage and related cellular plans:

- “This issue is totally leaching data from my data plan. I have 3 GB per month, and 500MB I lost within one day only due to this issue. For my personal use was used [sic] only 40 MB.”<sup>24</sup> (Oct. 14, 2019)
- “Because of the ridiculously high cost of cell service in Canada, for the last 10 years I’ve used a prepaid service with a low data cap (100 MB per month). I almost never exceed that cap, until I installed iOS 13. After a couple of weeks I got the 90% data usage advisory from the carrier. In looking at the usage, in addition to the usual apps usage, at the top of the list

<sup>20</sup> [https://www.reddit.com/r/ios/comments/dw8979/uninstalled\\_apps\\_using\\_network\\_data/](https://www.reddit.com/r/ios/comments/dw8979/uninstalled_apps_using_network_data/)

<sup>21</sup> [https://www.reddit.com/r/ios/comments/d7njbf/ios\\_13\\_uninstalled\\_apps\\_using\\_data\\_even\\_after/](https://www.reddit.com/r/ios/comments/d7njbf/ios_13_uninstalled_apps_using_data_even_after/)

<sup>22</sup> <https://discussions.apple.com/thread/250660254?answerId=251283502022&page=3>

<sup>23</sup> <https://discussions.apple.com/thread/250660254?answerId=251283502022&page=3>

<sup>24</sup> <https://discussions.apple.com/thread/250660254?answerId=251283502022#251283502022>

Uninstalled Apps data was over 50 MB. . . . Now I was being billed for over usage by the carrier.”<sup>25</sup> (Oct. 5, 2019)

- “I reset yesterday to coincide with my Verizon billing period. Total use is 4.3 MB and uninstalled apps is 197 KB. I know they are not large amounts but I do not have unlimited plan and IT SHOULD BE ZERO.”<sup>26</sup> (Nov. 14, 2019)
- “13.2.2 is definitely not a universal fix. I’m running this version and this month I’m up to 21mb. Without having uninstalled anything in months. This is about 5% of my total data usage. Seems small but if you are on a limited plan, every little bit counts.”<sup>27</sup> (Nov. 16, 2019)
- “I am having the same issue on all three iPhones in my family – both personal and work phones. I have upgraded to 13.2.3. On my work phone, uninstalled apps went through 1.6 GB data in less than one day where I had a wifi connection. I had to turn off cellular data on my personal phones as I was running out of data.”<sup>28</sup> (Dec. 4, 2019)
- “3 x family iPhones – 6s, 7 & 8. All on 13.2.3 My wife and daughter have both used there [sic] 5gb allowance this month. Which is unprecedented. If I switch off wifi and reset statistics, then I see around 500kb of Uninstalled Apps data usage in 10 minutes. This is killing both our data plans and battery life.”<sup>29</sup> (Dec. 6, 2019)
- “I have virgin 10GB plan. I’ve never even come close to using that until last month when I exceeded it. 80% on uninstalled apps! Apple is clueless and not helpful at all. Been into store and on phone with support number of times all with no solution. I’ve tried everything they suggested to no avail. Finally upgraded from my 8 to new iPhone 11. Thought I had solved my problem by getting new phone....was sadly wrong....still blowing thru data in uninstalled apps....up to 210 MB today alone which is over 1/2 my total usage. This is a brand new phone....nothing ever uninstalled!”<sup>30</sup> (Dec. 15, 2019)
- “Me and my wife are also having this problem. A week ago my wife lost

<sup>25</sup> [https://discussions.apple.com/thread/250698474?fbclid=IwAR3YJSRSDiti\\_NbjEIfVO0WV S6l2XCeOFgMlPo-xJzX3LPgWPpJ7VN6ABaE](https://discussions.apple.com/thread/250698474?fbclid=IwAR3YJSRSDiti_NbjEIfVO0WV S6l2XCeOFgMlPo-xJzX3LPgWPpJ7VN6ABaE)

<sup>26</sup> <https://discussions.apple.com/thread/250660254?answerId=251283502022#251283502022>

<sup>27</sup> <https://discussions.apple.com/thread/250660254?answerId=251283502022#251283502022>

<sup>28</sup> <https://discussions.apple.com/thread/250660254?answerId=251283502022&page=2>

<sup>29</sup> <https://discussions.apple.com/thread/250660254?answerId=251283502022&page=2>

<sup>30</sup> <https://discussions.apple.com/thread/250660254?answerId=251283502022&page=2>

over a gigabyte in a day to uninstalled apps and triggered her data limit warning – which was how we noticed. [I] thought mine has settled down and was ok now, so I put mobile data on again. Just noticed though that it has used over 200 mb today.”<sup>31</sup> (Dec. 25, 2019)

- “I just noticed this issue on my iPhone XR. I got a notification from my carrier that I’ve used 90% of my 8GB of data and I have 11 days left in my billing cycle. My data usage is usually around 4GB per month, so this was pretty strange. I noticed that System Services and Uninstalled apps we’re [sic] taking up the majority of my data usage. I Reset my statistics and am keeping a close eye on this now. This seems to have started around the time I installed iOS 13.3.”<sup>32</sup> (Jan. 28, 2020)
- “One thing I find very odd though, when I look at my data usage on my carrier website, when I actually use data it’s always an odd number, like 7.3115 MB. When this data glitch is in action, it’s a perfectly round number. 80.0000MB. 180.0000 MB. I have an 8GB data plan, which is plenty for my regular usage. But with this glitch, I have to turn my cellular data off when I’m on wifi to avoid going over my 8GB. And yes, it’s using cellular data even when I’m on wifi, and yes, I have wifi assist turned off.”<sup>33</sup>
- “I’m at 2GBs and so is my wife’s phone. It’s crazy and frustrating. Had to change cell plans bc [sic] Apple was so worthless at helping. Would love if someone had a solution.”<sup>34</sup>

31. Mr. Turner’s experience was similar to the reports above. Mr. Turner has a 5GB monthly plan with cellular data provider Verizon. Although 5GB previously had been sufficient for his needs, after installing iOS 13, he exceeded his 5GB cellular data limit. For example, in February 2020, Verizon charged Mr. Turner for one additional GB at \$15 per GB because he exceeded his 5GB plan by .25GB as a result of the increased cellular data usage caused by the Consuming Code.

<sup>31</sup> [https://discussions.apple.com/thread/250698474?fbclid=IwAR3YJSRSDiti\\_NbjEIfVO0WVS6l2XCeOfgMlPo-xJzX3LPgWpPj7VN6ABaE](https://discussions.apple.com/thread/250698474?fbclid=IwAR3YJSRSDiti_NbjEIfVO0WVS6l2XCeOfgMlPo-xJzX3LPgWpPj7VN6ABaE)

<sup>32</sup> <https://forums.macrumors.com/threads/uninstalled-apps-using-cellular-data.2195879/page-2>

<sup>33</sup> <https://forums.macrumors.com/threads/uninstalled-apps-using-cellular-data.2195879/page-2>

<sup>34</sup> [https://www.reddit.com/r/ios/comments/e3hxgc/uninstalled\\_apps\\_using\\_cellular\\_data/f9cyp34/](https://www.reddit.com/r/ios/comments/e3hxgc/uninstalled_apps_using_cellular_data/f9cyp34/)

1           32.     On March 18, Mr. Turner reset his iPhone's cellular data meter. He did not  
2     uninstall any applications after that date. By March 21, his iPhone was showing cellular data  
3     usage under Uninstalled Apps.

4           33.     Like many users, Mr. Turner was unable to stop his iPhone's excess cellular data  
5     consumption. While iPhone typically routes data over a free Wi-Fi connection when available,  
6     the Consuming Code used the cellular network and consumed cellular data even when  
7     Mr. Turner's phone was connected to Wi-Fi. The only way Mr. Turner was able to prevent the  
8     Consuming Code from wasting his cellular data was by turning cellular data off completely. But  
9     doing so severely limited the functionality of his iPhone.

10          34.     Mr. Turner's iPhone continued to consume cellular data recorded as Uninstalled  
11     Apps until July 2020.

12          35.     Mr. Turner, like all putative class members, paid for the cellular data that the  
13     Consuming Code used. Apple appropriated that cellular data for its own use. Every time Apple  
14     appropriated one megabyte of Mr. Turner's cellular data, the amount of cellular data available  
15     for Mr. Turner's use was reduced by one megabyte.

16          36.     The cellular data that Apple appropriated for its own use had value to Mr. Turner  
17     and the putative class members.

18          37.     Mr. Turner, like all putative class members, paid for the iPhone that Apple  
19     designed to allow it the capacity to secretly consume users' cellular data.

20          38.     Because use of cellular data is central to meaningful function of iPhones—and  
21     consumers expect data usage to be commensurate with their actual data use—Apple's  
22     appropriation of cellular data exclusively for its own purposes reduced the value of Mr. Turner's  
23     and putative class members' iPhones such that they should have paid less for those devices.

1           39. When Mr. Turner purchased his iPhone in 2018 from a Verizon store, he received  
2 and reviewed the materials accompanying his purchase and the documentation necessary to  
3 complete setup of the device. Mr. Turner also received and reviewed the notification from Apple  
4 advising him of the availability of iOS 13 for download in or about September or October 2019.  
5 At no point was Mr. Turner made aware of Apple's capability to surreptitiously consume his  
6 valuable cellular data exclusively for its own purposes, including for software development or  
7 other technical improvements, or its intention to use that capability by way of the Consuming  
8 Code in iOS 13.

9           40. Had Apple disclosed the Consuming Code or Apple's capability and intention to  
10 surreptitiously use his cellular data exclusively for its own purposes, Mr. Turner would not have  
11 acted the way he did. Namely, he would have purchased a different manufacturer's mobile  
12 device, paid less for the iPhone he owns, or selected a different cellular data plan to account for  
13 Apple's use of his cellular data.

14           41. Plaintiff continues to possess his iPhone and, because of Apple's advice regarding  
15 the security protections provided by iOS updates, and in order to ensure full functionality of his  
16 phone, Plaintiff intends to continue to avail himself of iOS updates in the future.

17 **D. Apple is responsible for the Consuming Codes' consumption of customers' data.**

18           42. Mr. Turner and other users could not have known what Apple knew: that Apple  
19 had the capacity to secretly appropriate users' cellular data exclusively for its own purposes, and  
20 that the iOS 13 Consuming Code caused their devices to surreptitiously consume significant  
21 amounts of cellular data and categorize the consumption as coming from "Uninstalled Apps,"  
22 even though the user did not cause the data consumption—either directly or by uninstalling an  
23 application.



1           43.     The Consuming Code is software introduced by Apple and Apple alone. It cannot  
2 simply be explained away as malware: software designed and introduced to iPhones by third  
3 parties looking to consume iPhone users' data. Apple is renowned for its security and for  
4 maintaining tight controls over its iOS and App Store.<sup>35</sup> Pulse Secure—a mobile security  
5 company—published study results showing that 97 percent of mobile malware was developed  
6 for Apple's leading competitor, Android. Moreover, even one of these rare iOS malware  
7 developers would not be able to alter the types of data categorized as Uninstalled Apps, a  
8 function controlled by iOS itself.

9           44.     It is also highly unlikely that the Consuming Code was an unintended defect in  
10 Apple's software that Apple could not have solved before consuming vast amounts of users'  
11 valuable cellular data. One user who tested a beta (early) version of iOS 13 reported noticing the  
12 Consuming Code before the iOS was released to the broader public.<sup>36</sup> Though he reported the  
13 "bug" to Apple—as did "more than ten" others, according to Apple—Apple still released iOS 13  
14 with the Consuming Code and failed to warn its users about the problem.

15           45.     Apple began officially pushing iOS 13 on iPhones in late 2019, and it has  
16 received a deluge of complaints about the Consuming Code since then. But while Apple released  
17 more than a dozen major updates to iOS 13 since its initial launch, the Consuming Code was not  
18 stopped until July 2020, and it continued to eat up consumer data throughout that period. Despite  
19 many inquiries, Apple has refused to comment on the issue.

20           46.     Forbes ran an article on March 17, 2020 highlighting the issue. Late in March, the  
21

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22 <sup>35</sup> See Vanja Svajcer, *Sophos Mobile Security Threat Report* (2014), available at  
[https://www.sophos.com/en-us/medialibrary/PDFs/other/sophos-mobile-security-threat-](https://www.sophos.com/en-us/medialibrary/PDFs/other/sophos-mobile-security-threat-report.pdf)  
23 [report.pdf](https://www.sophos.com/en-us/medialibrary/PDFs/other/sophos-mobile-security-threat-report.pdf)

24 <sup>36</sup> [https://www.reddit.com/r/ios/comments/d7njbf/ios\\_13\\_uninstalled\\_apps\\_using\\_data\\_even](https://www.reddit.com/r/ios/comments/d7njbf/ios_13_uninstalled_apps_using_data_even_after/f3uv2j9/)  
[after/f3uv2j9/](https://www.reddit.com/r/ios/comments/d7njbf/ios_13_uninstalled_apps_using_data_even_after/f3uv2j9/)



1 author provided an update: “after weeks of pressing for a response, Apple has now told me that  
2 its official position is that it declines to comment on this problem. A wholly unsatisfying  
3 situation for the many affected users who deserve to understand what is going on with their  
4 iPhones.”<sup>37</sup>

5 47. Apple’s silence exposes the truth: Apple deliberately failed to disclose to iPhone  
6 owners and would-be purchasers that it possessed the capability to appropriate their valuable  
7 cellular data exclusively for its own uses, and that the Consuming Code was intentionally  
8 introduced and maintained by Apple itself for its own undisclosed purposes and its own benefit.  
9 Apple also deliberately withheld from users the ability to control the costs associated with  
10 whatever undisclosed functions the Consuming Code performed. An iPhone’s cellular data meter  
11 lists dozens of iOS features that are integrated within iOS, and it tracks the data that each uses.  
12 Apple has the ability to correctly identify and account for all mobile data usage by its numerous  
13 operating system features. Instead, Apple tried to hide the massive data usage caused by the  
14 Consuming Code by miscategorizing it in a way that many users would not discern. In other  
15 words, Apple knew what it was doing, and it tried to keep users from discovering the amount of  
16 money Apple was costing them.

17 48. By failing to identify its capacity or intention to surreptitiously use consumers’  
18 cellular data exclusively for its own purposes, or the feature provided by the “Consuming Code,”  
19 Apple deliberately withheld from users the ability to control the costs associated with whatever  
20 undisclosed function the Consuming Code performed. Apple’s opt-in performance monitoring  
21 and bug tracking features, its Software Update features, and many video streaming services all  
22

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23 <sup>37</sup> [https://www.forbes.com/sites/gordonkelly/2020/03/14/apple-ios-13-iphone-cellular-data-](https://www.forbes.com/sites/gordonkelly/2020/03/14/apple-ios-13-iphone-cellular-data-problem-iphone-11-pro-max-u-iphone-xs-max-xr-update/#67bbb5c6485e)  
24 [problem-iphone-11-pro-max-u-iphone-xs-max-xr-update/#67bbb5c6485e](https://www.forbes.com/sites/gordonkelly/2020/03/14/apple-ios-13-iphone-cellular-data-problem-iphone-11-pro-max-u-iphone-xs-max-xr-update/#67bbb5c6485e)

1 either limit their usage to Wi-Fi only by default, or they allow the user to explicitly choose to let  
2 the feature use mobile data. So even if the Consuming Code was necessary for some unstated  
3 purpose, Apple deliberately chose to consume users' mobile data rather than limit (or allow users  
4 to limit) the Consuming Code to using Wi-Fi when it was connected, which would have avoided  
5 or at least reduced the harm to Mr. Turner and the putative class.

6 49. Apple failed to disclose its capacity to secretly use consumers' cellular data  
7 exclusively for its own purposes to iPhone purchasers, or the Consuming Code to those who  
8 installed iOS 13 on their iPhones, and that failure to disclose its technical capabilities and the  
9 Consuming Code was and is material. That is, Apple's omissions were likely to deceive  
10 reasonable consumers into believing that their iPhones' data consumption would be  
11 commensurate with their actual use of their iPhones.

12 50. A reasonable consumer would attach importance to the existence or nonexistence  
13 of Apple's ability to secretly use consumers' cellular data exclusively for its own purposes in  
14 determining their choice of action in purchasing an iPhone, the amount paid for the iPhone, and  
15 selection of cellular data plan.

16 51. iPhone users who downloaded iOS 13 were required to agree to Apple's iOS  
17 Software License Agreement. Apple uses a separate Software License Agreement for each  
18 version of iOS. The Software License Agreement for iOS 13 (like those before and after it),  
19 provides that California law governs the agreements:

20 **Controlling Law and Severability.** This License will be governed by and  
21 construed in accordance with the laws of the State of California, excluding its  
22 conflict of law principles. This License shall not be governed by the United Nations  
23 Convention on Contracts for the International Sale of Goods, the application of  
24 which is expressly excluded. If you are a consumer based in the United Kingdom,  
this License will be governed by the laws of the jurisdiction of your residence. If  
for any reason a court of competent jurisdiction finds any provision, or portion  
thereof, to be unenforceable, the remainder of this License shall continue in full

1 force and effect.<sup>38</sup>

2 52. Apple elected to have California law govern all claims and disputes concerning  
3 the common software required to operate its iPhones. Accordingly, the application of California  
4 law to the class members' claims is fair, appropriate, and an election affirmatively made by  
5 Apple in its Software License Agreement.

### 6 CLASS ALLEGATIONS

7 53. Under Federal Rule of Civil Procedure 23(b)(2) and (b)(3), Plaintiff brings this  
8 action as a class action on behalf of the Class of persons defined as:

9 All purchasers, owners, users, or lessees of any Apple iPhone who installed any  
10 version of iOS 13 on their Apple iPhone(s) prior to Version 13.6, and who used a  
limited cellular data plan with that iPhone while iOS 13 was installed.

11 54. Excluded from the Class are Defendant and any entities in which it has a  
12 controlling interest, Defendant's agents and employees, the Judge to whom this action is  
13 assigned, and any member of the Judge's staff and immediate family.

14 55. **Numerosity.** The Class is so numerous that joinder of all members is  
15 impracticable. Plaintiff is informed and believes, based on publicly-available information, that  
16 there are millions of class members, making joinder impracticable. Those individuals' identities  
17 are available through Apple's records, and class members may be notified of the pendency of  
18 this action by recognized, Court-approved notice methods. Moreover, the disposition of the  
19 claims of the Class in a single action will provide substantial benefits to all parties and the Court.

20 56. **Commonality.** Plaintiff and the Class share a number of common questions of  
21 law and fact, including—but not limited to—the following:

22 a. Whether Apple designed, created, advertised, marketed, and sold iPhones

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23  
24 <sup>38</sup> Available at [https://www.apple.com/legal/sla/docs/iOS13\\_iPadOS13.pdf](https://www.apple.com/legal/sla/docs/iOS13_iPadOS13.pdf)

- 1 knowing it possessed the capacity to surreptitiously appropriate users' cellular  
2 data and whether it withheld that information from consumers;
- 3 b. Whether Apple designed and updated iOS 13 with the Consuming Code;
- 4 c. Whether Apple designed, created, advertised, and marketed iOS 13 and  
5 subsequent updates to iOS 13 knowing that it contained the Consuming Code,  
6 and whether it withheld that information from consumers;
- 7 d. Whether Plaintiff and members of the Class were subject to charges for  
8 cellular data as a result of the Consuming Code, and whether their cellular  
9 data was appropriated without their knowledge as a result of the Consuming  
10 Code;
- 11 e. Whether Apple is subject to liability for concealing material facts from  
12 Plaintiff and the Class;
- 13 f. Whether Apple is liable for violating the California Consumer Legal  
14 Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750 *et seq.*;
- 15 g. Whether Apple is liable for violating the California Unfair Competition Law  
16 ("UCL"), Cal. Bus. & Prof. Code §§ 17200 *et seq.*;
- 17 h. Whether Apple is liable for violating the California Computer Data Access  
18 and Fraud Act ("CDAFA"), Cal. Penal Code § 502(c);
- 19 i. Whether Apple is liable for Trespass to Chattels.
- 20 j. Whether Plaintiff and the Class are entitled to punitive damages; and
- 21 k. Whether other, additional relief is appropriate, and the nature of such relief.

22 57. **Typicality.** Plaintiff's claims are typical of the claims of the Class. Plaintiff's  
23 claims, like the claims of the Class, arise out of the same common course of conduct by Apple.  
24

Specifically, as a person whose iPhone consumed data that Plaintiff personally did not or could not use as a result of the Consuming Code, Plaintiff asserts claims that are typical of each Class member who experienced the same Consuming Code.

58. **Adequacy.** Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has retained competent and capable attorneys who are experienced trial lawyers with significant experience in complex and class action litigation, including consumer class actions. Plaintiff and his counsel are committed to prosecuting this action vigorously on behalf of the Class and have the financial resources to do so. Neither Plaintiff nor his counsel has interests that are contrary to or that conflict with those of the proposed Class.

59. **Predominance Under Fed. R. Civ. P. 23(b)(3).** Apple has engaged in a common course of conduct toward Plaintiff and the Class. The common issues arising from this conduct that affect Plaintiff and the Class predominate over any individual issues. Adjudication of these common issues in a single action has important and desirable advantages of judicial economy.

60. **Superiority Under Fed. R. Civ. P. 23(b)(3).** A class action is the superior method for the fair and efficient adjudication of this controversy. Class-wide relief is essential to compel Apple to comply with applicable law. The interest of individual Class members in individually controlling the prosecution of separate claims against Apple is small because the damages in any individual action are small. Class treatment is superior to multiple individual suits or piecemeal litigation because it conserves judicial resources, promotes consistency and efficiency of adjudication, provides a forum for small claimants, and deters illegal activities. There will be no significant difficulty in the management of this case as a class action.

61. **Appropriateness of Final Injunctive Relief Under Fed. R. Civ. P. 23(b)(2).** The prosecution of separate actions by individual class members would create a risk of



1           65. Apple is a “person” under California Civil Code § 1761(c).

2           66. Apple iPhones constitute “goods” and the continuing iOS updates Apple develops,  
3 releases, and encourages iPhone users to download constitute “services” as defined by Civil  
4 Code §§ 1761(a)–(b).

5           67. Plaintiff and the Class members are “consumers” as defined by Civil Code  
6 § 1761(d) and they and Apple have engaged in a “transaction” as defined by Civil Code  
7 § 1761(e).

8           68. As alleged herein, Apple made numerous omissions concerning its capability and  
9 intention to surreptitiously consume users’ cellular data exclusively for its own purposes, the  
10 manner in which iPhones consumed data, and the effects of the Consuming Code.

11           69. Apple’s acts, practices, and omissions were intended to and did result in the sale of  
12 goods and services to Plaintiff and the Class members in violation of Civil Code § 1770. Apple’s  
13 CLRA violations include that it:

14               a. Represented that its goods and services have characteristics that they do not  
15               have; and

16               b. Represented that its goods and services are of a particular standard, quality, or  
17               grade when they were not.

18           70. As alleged herein, Apple distributed, marketed, and advertised its goods and  
19 services to Class members while deliberately concealing material facts about, and central to the  
20 function of, those goods and services. Apple’s omissions were material because they were likely  
21 to deceive reasonable consumers into believing that their iPhones’ cellular data consumption  
22 would be commensurate with their actual use of their iPhones. Plaintiff and putative Class  
23 members had no way of unraveling Apple’s deception on their own, and they could not have  
24

1 known the truth about Apple's capabilities and intentions with respect to surreptitious use of  
2 their cellular data. Had Apple disclosed its cellular data use capabilities or the Consuming Code,  
3 Plaintiff and Class members would not have acted as they did and instead would have purchased  
4 a different manufacturer's mobile device, paid less for their iPhones in light of Apple's ability to  
5 secretly use their cellular data, or, at a minimum, selected a different cellular data plan.

6 71. Apple owed Plaintiff and putative Class members a duty to disclose the truth about  
7 its cellular data use capabilities and the Consuming Code because Apple: (1) possessed exclusive  
8 knowledge of those matters and (2) intentionally concealed the foregoing from Plaintiff and  
9 putative Class members.

10 72. As a direct and proximate cause of Apple's violations of the CLRA, Plaintiff and  
11 the Class have suffered injury in fact, including monetary damages. Plaintiff's and the Class  
12 members' iPhones consumed valuable cellular data that Plaintiff and the Class did not or could  
13 not use themselves or authorize the use of, but for which they otherwise paid. Plaintiff and the  
14 Class members also purchased and paid for goods and services that they otherwise would not  
15 have, or in the alternative, would have paid less for.

16 73. This claim seeks only injunctive relief at this time. Plaintiff, however, is sending a  
17 demand letter to Apple via certified mail pursuant to the requirements of the CLRA, providing  
18 the notice required by Cal. Civ. Code § 1782(a). If Apple does not correct or otherwise rectify  
19 the harm alleged by Plaintiff in his letter or this Complaint within the statutorily required thirty-  
20 day period, Plaintiff will amend this Complaint to seek monetary damages against Apple  
21 pursuant to Cal. Civ. Code §§ 1781 and 1782.

22 74. Plaintiff seeks an order awarding costs of court and attorneys' fees under Cal. Civ.  
23 Code § 1780(e)



**Second Claim for Relief**  
**Violations of the California Unfair Competition Law**  
**Cal. Bus. & Prof. Code §§ 17200 *et seq.***  
*On Behalf of Plaintiff and the Class*

75. Plaintiff individually and on behalf of the Class realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

76. Apple is a “person” under Cal. Bus. & Prof. Code § 17201.

77. Apple violated the California Unfair Competition Law (“UCL”) Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by engaging in unlawful, unfair, and deceptive business acts and practices.

78. Apple has engaged in “unlawful” business practices by violating multiple laws, including the CLRA and the California Computer Data Access and Fraud Act, as set forth below.

79. Apple has engaged in “unfair” business practices by knowingly designing, developing, releasing, and advertising iOS 13 with a significant Consuming Code that could consume Plaintiff’s and the Class members’ cellular data without their input, all while knowing that its iOS is required to operate its iPhone devices.

80. Apple has engaged in deceptive business acts and practices by failing to disclose to Plaintiff and the Class that its iOS contained the Consuming Code, so that Plaintiff and members of the Class were unable to make informed choices about whether to purchase an iPhone, install the iOS on their iPhones, or alter their cellular data plans to account for the increased cellular data usage caused by the Consuming Code.

81. Apple’s omissions—all of which emanated from California—were material because they were likely to (and did) deceive reasonable consumers.

82. As a result of Apple’s conduct, Plaintiff and the Class suffered economic injury in that (1) Apple appropriated their cellular data for its own use, and (2) they paid more for their

1 iPhones than they would have had they known of Apple's ability to secretly use their cellular  
2 data.

3 83. Plaintiff and the Class are entitled to and do seek all available monetary and non-  
4 monetary relief for Apple's UCL violations, including restitutionary damages and an order  
5 enjoining Apple's unlawful acts and practices, plus attorneys' fees and costs.

6 **Third Claim for Relief**  
7 **Violations of the California Computer Data Access and Fraud Act**  
8 **Cal. Penal Code §§ 502 *et seq.***  
9 *On Behalf of Plaintiff and the Class*

10 84. Plaintiff individually and on behalf of the Class realleges and incorporates by  
11 reference each and every allegation set forth in the preceding paragraphs.

12 85. By pushing iOS 13 to unsuspecting consumers, Apple violated the California  
13 Computer Data Access and Fraud Act ("CDAFA").

14 86. Apple knowingly accessed Plaintiff's and the Class members' iPhones and altered,  
15 damaged, deleted, or destroyed data, computer software, or computer systems on their iPhones.

16 87. Moreover, Apple knowingly disrupted or caused the disruption of cellular data  
17 usage on Plaintiff's and the Class members' iPhones.

18 88. When Plaintiff and members of the Class updated their iPhones to iOS 13, they did  
19 not know—nor could they, through the exercise of reasonable diligence, have known—that  
20 iOS 13 contained the Consuming Code.

21 89. Because Plaintiff and members of the Class did not know that iOS 13 contained  
22 the Consuming Code, they did not consent to Apple adding, altering, damaging, deleting, or  
23 destroying the operating system on their iPhones such that their iPhones would consume cellular  
24 data in a manner untethered to their actual use of their iPhones.

90. Because Plaintiff and members of the Class did not know that iOS 13 contained

1 the Consuming Code, they did not consent to Apple disrupting or causing the disruption of their  
2 cellular data usage on their iPhones.

3 91. Plaintiff and the Class are entitled to and do seek all monetary and non-monetary  
4 relief allowed by law for Apple's violation of the CDAFA, including damages, punitive  
5 damages, an order enjoining Apple's unlawful acts and practices, and attorneys' fees and costs.

6 **Fourth Claim for Relief**  
7 **Trespass to Chattels**  
8 *On Behalf of Plaintiff and the Class*

9 92. Plaintiff individually and on behalf of the Class realleges and incorporates by  
10 reference each and every allegation set forth in the preceding paragraphs.

11 93. Apple, intentionally and without consent or other legal justification, introduced  
12 Consuming Code onto Plaintiff and Class members' iPhones that interfered with their use of  
13 their property.

14 94. Apple, intentionally and without consent or other legal justification, introduced  
15 Consuming Code onto Plaintiff and Class members' iPhones that made their iPhones  
16 surreptitiously consume cellular data, which caused Plaintiff and Class members to incur cellular  
17 data charges, suffer from reduced iPhone data speeds, and lose the use of cellular data they  
18 purchased.

19 95. Apple's intentional and unjustified introduction of the Consuming Code interfered  
20 with Plaintiff and the Class members' use of their iPhones. Alternatively, Apple's conduct  
21 damaged the affected iPhones by causing them to perform more poorly than they would have  
22 performed absent the Consuming Code.

23 96. Plaintiff and the Class members were harmed by Apple's conduct and Apple's  
24 conduct was a substantial factor in causing such harm.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on his own behalf and on the behalf of the Class, prays for judgment against Defendants:

- A. Certifying the proposed Class;
- B. Appointing Plaintiff as representative of the Class;
- C. Appointing the undersigned counsel as counsel for the Class;
- D. Awarding Plaintiff and the Class all damages allowed by law and/or equity (but not damages under the CLRA), including statutory, restitutionary, and punitive damages, and both pre- and post-judgment interest on any amounts awarded;
- E. Awarding Plaintiff and the Class's attorneys' fees and costs, as allowed by law and/or equity;
- F. Enjoining Apple from continuing the unfair, unlawful, and deceptive business practices alleged in this Complaint;
- G. Granting Plaintiff leave to conform this First Amended Class Action Complaint to the evidence produced at trial; and
- H. Granting such other and further relief as the Court deems necessary, just, and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all issues so triable.

1 DATED this 28th day of January, 2021.

2 TOUSLEY BRAIN STEPHENS PLLC

3 By: /s/ Jason T. Dennett

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18 *Attorneys for Plaintiff and the Putative Class*

19 **ATTESTATION**

20 I, David M. Berger, am the ECF User whose ID and password are being used to  
21 file the foregoing document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that  
22 the above signatories have concurred in this filing.

23 By: /s/ David M. Berger

**CERTIFICATE OF SERVICE**

I hereby certify that on January 28, 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all Counsel of Record.

/s/David Berger

David Berger